



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

March 11, 2005

Mr. Charles K. Eldred
Barney Knight & Associates
223 West Anderson Lane, Suite A-105
Austin, Texas 78752

OR2005-02099

Dear Mr. Eldred:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 219960.

The City of Lexington Police Department (the "department"), which you represent, received a request for "all unredacted reports, citations, criminal records, complaints, arrest records, notes, information and any other documents . . . that in any way relate to [two named individuals]." You claim that the submitted information is excepted from disclosure under sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of the information requested.¹ We have also received and considered comments from the requestor. *See* Gov't Code § 552.304 (allowing interested party to submit comments indicating why requested information should or should not be released).

Initially, we note that the requestor claims that the department failed to request a decision from this office within the ten business day period mandated by section 552.301(b) of the Government Code. The instant request for information was received by the department on December 15, 2004. This office does not count any holidays, including skeleton crew days

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

observed by a governmental body, as business days for the purpose of calculating a governmental body's deadline under the Public Information Act (the "Act"). The department informs us that the City of Lexington was closed on December 24, 2004. Therefore, December 24, 2004 was not a business day for the purpose of the Act; thus, the tenth business day for the instant request was December 30, 2004. As such, the department's request for decision was timely.

Second, we note that the submitted information includes the minutes of a public meeting of a governmental body. The minutes and agendas of a governmental body's public meetings are specifically made public by statute. *See* Gov't Code §§ 551.022 (minutes and tape recordings), 551.043 (notice). Information made public by statute may not be withheld from the public under any of the Act's exceptions to public disclosure. *See, e.g.*, Open Records Decision Nos. 544 (1990), 378 (1983), 161 (1977), 146 (1976). Accordingly, the submitted minutes of a public meeting must be released in accordance with the Open Meetings Act.

Next, we consider the application of section 552.101 of the Government Code to some of the submitted information.² Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses common law privacy. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. *See United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). In this instance, the requestor asks for all information concerning two certain people. In this case, we believe that the individuals' rights to privacy have been implicated. Thus, where the named individuals are possible suspects, arrestees, or criminal defendants, we conclude that you must withhold this information under common law privacy as encompassed by section 552.101 of the Government Code. *See id.*

Section 552.101 of the Government Code also encompasses information protected by other statutes such as Family Code section 58.007. Juvenile law enforcement records relating to conduct that occurred on or after September 1, 1997 are confidential under section 58.007. The relevant language of section 58.007(c) reads as follows:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

²The Office of the Attorney General will raise a mandatory exception like section 552.101 on behalf of a governmental body, but ordinarily will not raise other exceptions. Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Some of the information at issue involves juvenile conduct that occurred after September 1, 1997. It does not appear that any of the exceptions in section 58.007 apply; therefore, the information submitted as Exhibit D-3 is confidential pursuant to section 58.007(c) of the Family Code. You must withhold Exhibit D-3 in its entirety under section 552.101 of the Government Code.

Finally, we will address the department's arguments concerning the application of section 552.108 of the Government Code to the remaining information. Section 552.108(a) excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if: (1) release of the information would interfere with the detection, investigation, or prosecution of crime." Generally, a governmental body claiming section 552.108 must reasonably explain how and why the release of the requested information would interfere with law enforcement. *See* Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(A); *see also Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). You state that Exhibit D-1 relates to a pending criminal investigation of the requestor's client. In his comments to this office, the requestor asserts that there is no criminal *litigation* pending against his client. However, the department asserts, in letters dated December 30, 2004, January 4, 2005, and January 6, 2005, that there is a pending criminal *investigation* of the requestor's client and that the information at issue relates to that investigation. Based upon the department's representations and the documents presented for our review, we conclude that the release of Exhibit D-1 would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases).

However, section 552.108 does not except from disclosure basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). Basic information refers to the information held to be public in *Houston Chronicle Publishing Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.—Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). Thus, with the exception of the basic front page offense and arrest information, you may withhold Exhibit D-1 from disclosure based on section

552.108(a)(1).³ We note that you have the discretion to release all or part of the information that is not otherwise confidential by law. Gov't Code § 552.007.

In summary, the submitted minutes of a public meeting must be released under section 551.022 of the Government Code. The department must withhold Exhibit D-3 in its entirety under section 58.007 of the Family Code. Where the named individuals are possible suspects, arrestees, or criminal defendants, the department must withhold the information under common law privacy as encompassed by section 552.101 of the Government Code. With the exception of basic information that must be released, the department may withhold Exhibit D-1 under section 552.108(a)(1) of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

³As our ruling on this issue is dispositive, we need not address your remaining arguments against disclosure except to note that basic information held to be public in *Houston Chronicle* is generally not excepted from public disclosure under section 552.103 of the Government Code. Open Records Decision No. 597 (1991).

body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Amanda Crawford".

Amanda Crawford
Assistant Attorney General
Open Records Division

AEC/sdk

Ref: ID# 219960

Enc. Submitted documents

c: Mr. Nick Bhakta
Kuhn, Doyle & Kuhn, P.C.
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(w/o enclosures)